

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION**

Melissa Martin, Jasmine Best, Brianna
Jacobs, Ashley Beers, Colin Muirhead, Janet
Romero, Caroline Barnette,

Plaintiffs,

vs.

LuLu's Myrtle Beach, LLC d/b/a Lucy
Buffett's LuLu's; and d/b/a LuLu's North
Myrtle Beach, Lucy Buffett, individually,
George Martin, individually, Gerald Tipton,
individually, Cheryl Coesens, individually,
Vanessa Owens, individually, Robin Hinton,
individually, Douglas "Todd" Goings,
individually, and Tonya Clayton,
individually,

Defendants.

NOTICE OF REMOVAL

C.A. No.: _____

**TO: THE HONORABLE DISTRICT COURT OF THE UNITED STATES FOR THE
DISTRICT OF SOUTH CAROLINA, FLORENCE DIVISION**

The defendants, LuLu's Myrtle Beach, LLC d/b/a Lucy Buffett's LuLu's; and d/b/a LuLu's North Myrtle Beach, Lucy Buffett, individually, George Martin, individually, Gerald Tipton, individually, Cheryl Coesens, individually, Vanessa Owens, individually, Robin Hinton, individually, Douglas "Todd" Goings, individually, and Tonya Clayton, individually, (collectively "defendants"), would respectfully allege and show unto the Court as follows:

1. The defendants are parties to a civil action brought against them in the Court of Common Pleas of Horry County entitled "Melissa Martin, Jasmine Beset, Brianna Jacobs, Ashley Beers, Colin Muirhead, Janet Romero, Caroline Barnette vs. LuLu's Myrtle Beach, LLC

d/b/a Lucy Buffett's LuLu's; and d/b/a LuLu's North Myrtle Beach, Lucy Buffett, individually, George Martin, individually, Gerald Tipton, individually, Cheryl Coesens, individually, Vanessa Owens, individually, Douglas "Todd" Goings, individually, and Tonya Clayton, individually" which action bears C.A. No. 2022-CP-26-02946, and which was initially commenced by acceptance of service of the summons and complaint on the defendants on May 16, 2022. Copies of the Summons and Complaint, the Acceptance of Service, Defendants' Answer to the Complaint and the Motion and Consent Order to Amend Complaint are attached hereto as **Exhibits A, B, C and D** respectively.

2. On December 22, 2022, the defendants were served with a First Amended Summons and a First Amended Complaint which was brought against them in the Court of Common Pleas of Horry County. Copies of the First Amended Summons and First Amended Complaint, which action continues to bear C.A. No. 2022-CP-26-02946, are attached hereto as **Exhibit E**. No further proceedings have been had therein.

3. This petition for removal is timely filed pursuant to 28 U.S.C. § 1446(b) in that it is filed within thirty (30) days from the date on which plaintiffs filed the First Amended Summons and First Amended Complaint.

4. Upon information and belief, at the time this action was commenced and at all relevant times thereafter to the present, Plaintiff Melissa Martin was and is a citizen and resident of Horry County, South Carolina. (First Amended Complaint, ¶ 4).

5. Upon information and belief, at the time this action was commenced and at all relevant times thereafter to the present, Plaintiff Jasmine Best was and is a citizen and resident of Horry County, South Carolina. (First Amended Complaint, ¶ 5).

6. Upon information and belief, at the time this action was commenced and at all relevant times thereafter to the present, Plaintiff Brianna Jacobs was and is a citizen and resident of Marlboro County, South Carolina. (First Amended Complaint, ¶ 6).

7. Upon information and belief, at the time this action was commenced and at all relevant times thereafter to the present, Plaintiff Ashley Beers was and is a citizen and resident of Horry County, South Carolina. (First Amended Complaint, ¶ 7).

8. Upon information and belief, at the time this action was commenced and at all relevant times thereafter to the present, Plaintiff Colin Muirhead was and is a citizen and resident of Horry County, South Carolina. (First Amended Complaint, ¶ 8).

9. Upon information and belief, at the time this action was commenced and at all relevant times thereafter to the present, Plaintiff Janet Romero was a citizen and resident of Supply, North Carolina. (First Amended Complaint, ¶ 9).

10. Upon information and belief, at the time this action was commenced and at all relevant times thereafter to the present, Plaintiff Caroline Barnette was a citizen and resident of Matthews, North Carolina. (First Amended Complaint, ¶ 10).

11. The Court of Common Pleas of Horry County, South Carolina is located in the District of South Carolina, Florence Division. Under 28 U.S.C. §§ 1441(a) and 1446(a), the defendants may remove a state court civil action to the district court and division within which such action is pending. This Court embraces the place where the State Action being removed is pending. Therefore, the State action may be removed to the Court under 28 U.S.C. §§ 1441(a) and 1446(a).

12. Removal of the State Action is proper under 28 U.S.C. §§ 1331 and 1441(a) because this Court has original jurisdiction of this action. The First Amended Complaint in

plaintiffs' State Action alleges two causes of action: (1) a claim under the South Carolina Payment of Wages Act and (2) a claim under the Fair Labor Standards Act, 29 U.S.C. § 203(m), 206. Both claims are brought individually. *See* First Amended Complaint. Specifically, plaintiffs allege the defendants illegally deducted amounts from the wages of plaintiffs without proper authorization, that plaintiffs were paid less than minimum wage, that plaintiffs were not properly paid for overtime wages, that plaintiffs were improperly charged for T-shirts and aprons, that the Tip Pool in which plaintiffs were required to participate was not proper because employees who did not customarily and regularly receive tips were participants in the Tip Pool, and that defendants are not entitled to Tip Credit because plaintiffs were required to participate in deep cleaning. Minimum wage provisions, overtime provisions, tip pooling provisions and tip credit provisions are all governed by the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 206 and § 207(a)(1), and the Regulations promulgated thereunder, thus revealing federal questions. The district court has original jurisdiction over such claims pursuant to 28 U.S.C. § 1331 and, therefore, this action is removable pursuant to 28 U.S.C. § 1441(a). Moreover, this is the first time the plaintiffs have raised a federal question in a pleading.

13. In addition to alleging violations of the minimum wage and overtime laws which are governed by the FLSA, the plaintiffs allege violations of the South Carolina Payment of Wages Act. Some or all of plaintiffs' SCPWA claims are preempted by the FLSA; however, to the extent any of plaintiffs' alleged violations of the SCPWA are not preempted by the FLSA, this court should exercise supplemental jurisdiction over them because plaintiffs' state law claims are so related to the FLSA claims that they form the same case or controversy. *See United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 725, 86 S. Ct. 1130, 16 L.Ed.2d 218 (1966) (finding supplemental jurisdiction allows parties to append state law claims over which federal

courts would otherwise lack jurisdiction to federal claims, so long as “[t]he state and federal claims ... derive from a common nucleus of operative fact”). As such, the Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

14. Based on the foregoing, pursuant to 28 U.S.C. §§ 1331, 1441, and 1446, removal of the State Action to this Court is appropriate.

15. The defendants submit this Notice of Removal without waiving any defense to the claims asserted by plaintiffs or conceding that plaintiffs have pled claims upon which relief can be granted.

WHEREFORE, the defendants respectfully request that this action, now pending in the Court of Common Pleas for Horry County, South Carolina, be removed to this Court.

s/Phillip E. Reeves

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Greenville, South Carolina
January 6, 2023